



The following constitutes the order of the Court.  
Signed: September 28, 2023

A handwritten signature in cursive script, reading "Charles Novack", is written over a horizontal line.

Charles Novack  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re:  
TANJILA ISLAM,  
  
Debtor.

Case No. 22-40278 CN  
Chapter 7

RICHARD KORAL,  
  
Plaintiff,  
  
v.  
  
TANJILA ISLAM,  
  
Defendant.

Adversary No. 22-4036 CN

**MEMORANDUM DECISION AND  
ORDER DETERMINING  
DISCHARGEABILITY OF DEBT  
AND DISCLOSURE OF JUDICIAL  
NOTICE TAKEN BY THE COURT**

On August 8, 2023, the court concluded a two-day trial in this adversary proceeding, and all appearances were noted on the record. Plaintiff Richard Koral seeks a non-dischargeable judgment under Bankruptcy Code §§ 523(a)(2)(A) and (a)(6) against defendant Tanjila Islam for misrepresentations made by TigerTrade Services, Inc. ("TigerTrade") that induced him to loan TigerTrade \$506,026.45 in September 2017. Islam was TigerTrade's sole equity interest holder and president, and she negotiated the loan terms with Koral. Islam also personally guaranteed the loan. As the parties are aware, many of this adversary proceeding's pertinent facts were established for purposes of trial

1 through this court's Federal Rule of Bankruptcy Procedure 7056(g) order. After reviewing  
2 the parties' dueling summary judgment motions, this court determined, pursuant to Rule  
3 7056(g), that the promissory note contained material misrepresentations which Koral  
4 justifiably relied on to his detriment. The two-day trial was meant to address, among other  
5 things, whether Islam knowingly made those misrepresentations with the intent to deceive  
6 Koral. The following constitutes this court's findings of fact and conclusions of law under  
7 Fed. R. Bankr. P. 7052(a)(1) which incorporate this court's Rule 7056(g) determinations.

### 8 **FINDINGS OF FACT**

9 In 2017 and at all relevant times thereafter, Islam was the owner and president of  
10 TigerTrade, an entity which (among other things) imported foreign made apparel for the  
11 off-price market. TigerTrade was the classic "middleman" operation, and it typically  
12 imported goods with the intent of selling them to the retail trade. In or about August 2017,  
13 Islam approached Koral (who had been a successful businessman in the off-price apparel  
14 market) for a loan to finance TigerTrade's purchase of foreign made apparel which it  
15 intended to sell to Mexican buyers. In one of her preliminary emails to Koral, Islam  
16 represented to him that she had a "current deal" with two "long-time" Mexican buyers for  
17 goods located in Poland. She informed Koral in her August 30, 2017 email that she had  
18 already done over three million dollars in deals in 2017 with these buyers and that  
19 TigerTrade had another three million dollars "in the pipeline with them." She further  
20 informed him that the goods would be shipped from Poland to a bonded warehouse in  
21 Laredo, Texas from where "the buyers ship across the border to Mexico." Islam anticipated  
22 that the goods would be in transit for approximately five weeks. After some negotiation  
23 regarding the structure of this deal, the parties agreed that Koral would lend TigerTrade  
24 421,759 Euros<sup>1</sup> to finance TigerTrade's purchase of the apparel described in the August  
25 30, 2017 email (the "Goods"). The parties' Secured Promissory Note & Security  
26 Agreement (the "Note"), dated September 11, 2017, had a December 31, 2017 maturity

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28 <sup>1</sup> The parties do not dispute that the loan when converted to dollars totaled \$506,026.45.

1 date and it a) granted Koral a security interest in the Goods, b) required TigerTrade to  
2 provide the Bills of Lading to Koral “upon shipping,” and c) prohibited TigerTrade (absent  
3 Koral’s consent) from exchanging, leasing, using, selling or disposing of the Goods or  
4 doing anything that may impair the Goods’ value and the security and insurance coverage.  
5 Koral understood that TigerTrade would release the Goods to the Mexican buyers only  
6 after they paid for them.<sup>2</sup> While the Note does not explicitly so state, it was clear that  
7 TigerTrade intended to use the funds from this sale to repay Koral.

8 TigerTrade used Koral’s funds to complete its purchase of the Goods, and the Goods  
9 arrived in the Laredo bonded warehouse in mid-November 2017. The Goods thereafter  
10 disappeared from the warehouse and TigerTrade claims that Javon never paid for them.  
11 While some of the “who,” “what,” and “where” questions remain unanswered, several  
12 salient facts are certain: TigerTrade never repaid the Note; Javon removed the Goods from  
13 the bonded warehouse without Koral’s consent and moved them to Mexico; TigerTrade  
14 and Islam delayed informing Koral of the Goods’ removal from the warehouse for as long  
15 as possible; and there is no credible evidence that Islam, despite testifying that the Goods  
16 were wrongfully removed, ever a) investigated why the Goods were removed, b) discussed  
17 their allegedly unauthorized removal with Basil Logistics (the company that operated the  
18 bonded warehouse), or c) confronted Javon regarding its alleged theft of the Goods.  
19 Instead, Koral got, for lack of a better description, the “runaround.”

20 After the December 31, 2017 maturity date came and went, Islam responded to  
21 Koral’s payment inquiries by informing him that Javon had reneged on its purchase and  
22 was not going to buy the Goods. She further informed Koral that Javon was having  
23 difficulty selling the apparel from a previous deal with TigerTrade, and she asked Koral if  
24 he could assist in selling the Goods and the slow-moving inventory (the “Miss Sixty  
25 Apparel” purportedly located in Panama) from her earlier deal with Javon. Over the next  
26 few months, Koral attempted to use his industry connections to help TigerTrade sell the

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27  
28 <sup>2</sup> Islam identified the buyers as two brothers, Benny and Moises Amiga, who owned  
a Mexican company known as Javon, S.A. The court will refer to the buyers as “Javon.”

1 Miss Sixty Apparel and the Goods. While Islam asserts that Koral's efforts are proof that  
2 he agreed to modify the Note and look to the sale of the Miss Sixty Apparel for payment,  
3 Koral agreed to nothing of the sort. The Note provides that it can only be modified or  
4 amended by a "written agreement executed by Company and Lender," and no such  
5 document was introduced into evidence. Instead, the evidence clearly indicates that  
6 Koral's efforts to assist TigerTrade in selling the Miss Sixty Apparel were for the sole  
7 purpose of generating income that would allow TigerTrade to repay the Note.<sup>3</sup>

8 Koral also tried, in early 2018, to help TigerTrade sell the Goods, which he still  
9 believed were being held in the Laredo bonded warehouse. In early April 2018, Koral  
10 informed Islam that a business associate, Henry Alger, was interested in inspecting the  
11 Goods and possibly purchasing some of them. When Islam learned of Alger's interest, she  
12 only then informed Koral that the Goods were no longer in the Laredo warehouse but with  
13 Javon in Mexico. This exchange was the first time Koral learned that the Goods had been  
14 released from the warehouse without his permission.<sup>4</sup>

15 Before proceeding further, a brief explanation of Bills of Lading is necessary. A  
16 Bill of Lading is the primary legal document used in sea transport. It functions as a contract  
17 of carriage, transport goods receipt and (most importantly in this case) as the document of  
18 title indicating who owns the shipped goods. 1 Saul Sorkin, *Goods in Transit* § 2.01 (2023  
19 Matthew Bender). Once goods "pass through" Customs, they are typically released to the  
20 person who holds the Bill of Lading. Here, the Bill of Lading for the Goods named  
21 TigerTrade as the consignee (*i.e.*, the entity who bought the Goods). Shipped goods that  
22 are subject to a Bill of Lading may be released by a "Telex Release." *See* Mark L. Shope,

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24 <sup>3</sup> Koral believed that the Miss Sixty Apparel was stale product with little market  
25 value. While Islam's counsel attempted to impeach Koral regarding its market value—  
26 purportedly to generate evidence that he had failed to "mitigate his damages"—this line of  
27 questioning provided no relevant evidence. Koral was under no contractual or legal duty  
28 to assist TigerTrade in selling the Miss Sixty Apparel. He simply wanted to get paid, and  
if he could help TigerTrade in that effort, so be it.

<sup>4</sup> Her statement also contradicted her prior representation that Jovan was no longer  
interested in the Goods.

1 *The Bill of Lading on the Blockchain: An Analysis of its Compatibility with International*  
2 *Rules on Commercial Transactions*, 22 Minn. J.L. Sci. & Tech. 163, 200 (2020) (“A ‘Telex  
3 release’ is an industry term that refers to the release of cargo at one port when the bill of  
4 lading was presented somewhere else.”); *see also Justen-Marks Mfg. v. Soft Things*, 2008  
5 U.S. Dist. LEXIS 144250, at \*2 n. 1 (E.D.N.Y. Jan. 30, 2008) (explaining that a shipper  
6 will release goods to a buyer usually only after the shipper receives the bills of lading or if  
7 the seller authorizes the release by a telex or email). When a shipment is telex released, it  
8 signifies that the cargo owner has authorized the carrier to release the cargo to a named  
9 Release party without the presence of the original Bill of Lading. Shope, *The Bill of Lading*  
10 *on the Blockchain, supra*, at 200.

11 Islam testified that she did not authorize the release of the Goods. The court does  
12 not find her testimony credible. First, Islam’s description of Javon as a trusted and long-  
13 time buyer was not quite accurate. TigerTrade and Javon jointly purchased the Miss Sixty  
14 Apparel and had agreed that they would share the sales proceeds after Javon sold the goods.  
15 The Miss Sixty deal predated the Note, and TigerTrade had invested nearly a million  
16 dollars in the purchase of the Miss Sixty Apparel. Javon reneged on the Miss Sixty deal  
17 and refused to share any of the sales proceeds with TigerTrade, purportedly because it was  
18 having trouble selling the Miss Sixty Apparel. While Islam did not definitively state when  
19 she learned that Javon was breaching this contract, the evidence suggests that she knew  
20 that trouble was brewing close to when the parties executed the Note. Islam also testified  
21 that she repeatedly asked Javon to pay for the Goods and that she never authorized the  
22 warehouse to release the Goods to Javon. The court discounts this testimony. Islam states  
23 that she primarily communicated with Javon by telephone or through the WhatsApp  
24 software, and that she no longer had the cell phone through which she could access these  
25 exchanges. Yet, several emails between Islam and Javon were introduced into evidence,  
26 including emails which instructed a TigerTrade employee to send the Bills of Lading to  
27 Javon and, critically, a series of October 17, 2017 emails between Basil Logistics,  
28 TigerTrade, and Javon in which 1) Basil Logistics advised TigerTrade and Javon that it

1 needed a Telex Release for the Goods, and 2) Islam replied by instructing a TigerTrade  
2 employee to send the Telex Releases to Basil Logistics. These emails bely Islam's  
3 testimony that she did not authorize Javon's removal of the Goods.

4 One would suspect that Javon's removal of the Goods without payment would have  
5 generated a storm of angry communications from Islam to Javon, not to mention similar  
6 emails to Basil Logistics regarding why it released the Goods. Other than her self-serving  
7 testimony, no such evidence was introduced. Nor did Islam introduce a) any  
8 documentation indicating that Javon had agreed to pay for the Goods upfront or b) any  
9 corroborating evidence from Basil Logistics stating that Javon improperly removed the  
10 Goods.

11 In February 2019, Koral sued TigerTrade and Islam on the Note and guarantee in  
12 the United States District Court for the Central District of California. After TigerTrade  
13 and Islam failed to respond to the first amended complaint, the District Court entered a  
14 default judgment against them on September 9, 2019 for \$638,089.96 in damages and  
15 \$16,623.19 in attorney's fees (the "Default Judgment"). The parties acknowledge that  
16 Koral has recovered \$272,032.24 of the amount due<sup>5</sup> and that the unpaid principal balance  
17 of the Default Judgment was \$382,680.91 when Koral filed his complaint herein.<sup>6</sup>

## 18 CONCLUSIONS OF LAW

19 Koral asserts that Islam defrauded him when she represented that she would not  
20 release the Goods without his consent and first receiving payment, and that his resultant

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22 <sup>5</sup> Paragraph 23 of Koral's complaint in this adversary proceeding states that Koral  
23 has recovered \$272,032.24 from Islam/TigerTrade. Islam testified during trial that she had  
24 paid \$250,000 towards the Default Judgment. She did not describe how she paid these  
funds or whether they were in addition to the amounts listed in paragraph 23. The court  
therefore discounts this testimony.

25 <sup>6</sup> Koral's first amended District Court complaint sought damages for breach of the  
26 promissory note, money lent, breach of the guaranty, money had and received, fraud, and  
27 unjust enrichment. This court determined during the parties' summary judgment  
28 proceedings that the Default Judgment has no issue preclusive effect. The court finds,  
however, that the Default Judgment amount reflects the damages that Koral incurred due  
to Islam's fraud. The court takes judicial notice of Paragraph 23 of Koral's complaint in  
this adversary proceeding and Islam's response to Paragraph 23's allegations under Federal  
Rule of Evidence 201.

1 damages (*i.e.*, the Default Judgment) are non-dischargeable under Bankruptcy Code  
2 §§ 523(a)(2)(A) and (a)(6). Bankruptcy Code § 523(a)(2)(A) provides in relevant part that  
3 a debt “for money, property, services, or an extension, renewal, or refinancing of credit to  
4 the extent obtained by false pretenses, a false representation or actual fraud” is  
5 nondischargeable in a Chapter 7 case. Koral has the burden of establishing this claim by a  
6 preponderance of the evidence (*see Grogan v. Garner*, 498 U.S. 279, 291, 111 S.Ct.  
7 654, 112 L.Ed.2d 755 (1991)), and he must demonstrate that a) Islam made the false  
8 representations in question, b) she knew they were false when she made them, c) she made  
9 them with the intention and purpose of deceiving Koral, d) Koral relied on her  
10 representations, and e) he sustained damages as the proximate result of the  
11 misrepresentations having been made. *Ghomeshi v. Sabban*, 600 F.3d 1219, 1222 (9th Cir.  
12 2010). Koral has met his burden of proof. Islam misrepresented that TigerTrade would  
13 not release the Goods without payment, she knew that this was a false statement, and she  
14 made it to obtain the funds from Koral. Koral relied on her representation, and the Default  
15 Judgment represents his damages.

16 This court is aware that nondischargeability claims should be strictly construed  
17 against creditors and in favor of debtors, and that Islam testified that she fully intended for  
18 Javon to pay for the Goods before their release. Fraudulent intent, however, is rarely  
19 conceded on the witness stand, and Islam’s actions and emails undercut her testimony.  
20 Islam provided no evidence that Javon had agreed to pay for the Goods upfront, and Islam’s  
21 instruction to her employee to provide a Telex Release to Basil Logistics only a few weeks  
22 after she borrowed the funds indicate that she intended to promptly release the Goods to  
23 Javon after their arrival in Laredo. Had she intended differently, she would have  
24 introduced some fiery evidence demanding explanations from Javon and Basil Logistics.  
25 No such evidence was introduced.

26 Accordingly, Koral is entitled to a nondischargeable judgment under Bankruptcy  
27 Code § 523(a)(2)(A) in the amount of \$382,680.91, plus appropriate pre and post-petition  
28 interest, any awardable attorney’s fees, and any other appropriate relief under Federal Rule

1 of Bankruptcy Procedure 7058.

2 Koral further contends that Islam's conduct was willful and malicious under  
3 Bankruptcy Code § 523(a)(6). Under Bankruptcy Code § 523(a)(6), an individual debtor  
4 may not discharge a debt resulting from a willful and malicious injury to another entity or  
5 to the property of another entity. An injury is "willful" if the debtor had a subjective motive  
6 to inflict the injury or believed that injury was substantially certain to occur because of  
7 their conduct. *Carillo v. Su (In re Su)*, 290 F.3d 1140, 1142 (9th Cir. 2002); *Petralia v.*  
8 *Jercich (In re Jercich)*, 238 F.3d 1202, 1208 (9th Cir. 2001). "A 'malicious' injury  
9 involves (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and  
10 (4) is done without just cause or excuse." *In re Jercich*, 238 F.3d at 1209. Koral must  
11 satisfy these elements by a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. at  
12 291. Koral has not met his burden of proof as to either element. Islam's conduct was not  
13 willful because she intended to repay the Note, and the evidence did not establish that it  
14 she was substantially certain that Jovan would not pay for the Goods when TigerTrade  
15 borrowed the funds. Moreover, while Islam's misrepresentations were wrongfully and  
16 intentionally made without just cause or excuse, they are actionable under § 523(a)(6) only  
17 if Islam knew at the Note's execution that Javon would breach its contract with TigerTrade.  
18 Koral did not establish this fact by a preponderance of the evidence.

19 **PLEASE TAKE NOTICE** that pursuant to Federal Rule of Evidence 201(e), the  
20 parties have two weeks from the entry of this memorandum decision to object to this court's  
21 taking of judicial notice of the allegations in Paragraph 23 and Islam's rely to Paragraph  
22 23 in her answer. If any party timely objects, the court will conduct a hearing on the  
23 objection at a date and time set by the court. If no party timely objects, Koral is instructed  
24 to submit a proposed Judgment to this court.

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26 **\*\*\*END OF ORDER\*\*\***  
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28

Adversary No. 22-4036 CN

**COURT SERVICE LIST**

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All Other Recipients are ECF participants